Supreme Court, U.S.
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No. 01-1523

In The
Supreme Court of the United States

ROBERT L. VOIT,

Petitioner,

v.

LOUISVILLE AND JEFFERSON COUNTY BOARD OF HEALTH; MICHAEL HUMPREY; ROBERT CRABTREE; MELINDA G. ROWE; JOHN DOES; JEFFERSON COUNTY, KENTUCKY,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION FOR RESPONDENTS

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COUNTERSTATEMENT OF QUESTIONS PRESENTED FOR REVIEW

1. Whether the *Rooker-Feldman* doctrine, under the circumstances of the present case, required summary dismissal of the Petitioner's Complaint by the trial court.

2. Whether the unsupported allegations of "selective enforcement" of the Health and Sanitary Code in Petitioner's Complaint are sufficient to prove a violation of the Sixth Amendment to the United States Constitution.

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COUNTERSTATEMENT OF CASE

Petitioner has correctly stated the dates on which his Complaint was filed and subsequent opinions and orders were entered. However, the Petitioner has failed to set out the underlying state court actions and has mischaracterized the opinions issued by the United States District Court and by the United States Court of Appeals, Sixth Circuit. The Petitioner makes erroneous conclusionary statements concerning whether allegations contained in his Complaint are "fact" or "law".

The Petitioner mischaracterized the United States District Court scheduling conference on October 12, 1999. At that conference, it was agreed between the parties that a threshold, preclusive issue of the law existed and that it should be resolved preliminarily, in order to determine whether there was a need for discovery. That issue of law was, and is, whether or not the Petitioner had stated a cause of action in his Complaint which was sufficient to withstand a Fed.R.Civ.P. 12(b) motion to dismiss or a motion for summary judgment made pursuant to Fed.R.Civ.P. 56(b). The issue to be determined was whether the Petitioner's series of appeals and motions for discretionary review prosecuted in the Kentucky state courts precluded prosecution of essentially the same issues in the federal court system.

The history of the state court action is as follows:

1. Petitioner was convicted in Jefferson County, Kentucky District Court of a violation of the Jefferson County Department of Health Code on January 21, 1998. Petitioner was convicted by a jury of his peers after a two day trial.

2. Petitioner appealed his conviction to Jefferson County, Kentucky Circuit Court, Division 3. The jury conviction was affirmed by the state circuit court by Memorandum Opinion and Order dated July 13, 1998.

3. The Petitioner made subsequent motions for discretionary review before the Kentucky Court of Appeals and the Kentucky Supreme Court which were denied on December 8, 1998 and August 15, 1999, respectively. The Petitioner also filed a Petition for Writ of Certiorari to the United States Supreme Court which was denied. *Voit v. Kentucky*, 528 U.S. 1137 (2000).

The issues raised in the Petitioner's original statement of appeal which was filed in Jefferson County, Kentucky Circuit Court, Division 3, and in the motions for discretionary review were essentially the same issues raised in the Petitioner's Complaint filed in the United States District Court. The United States District Court's Opinion recognized that the contention and arguments made by the Petitioner in the state court appeal and motions for discretionary review were so inextricably intertwined with the contentions and arguments contained in his United States District Court Complaint as to render any favorable decision for the Petitioner by the United States District Court to be a determination of error of the decisions rendered in the states courts. The United States District Court applied the *Rooker-Feldman* doctrine [*Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983)] and dismissed the Petitioner's Complaint with prejudice, pursuant to Fed.R.Civ.P. 56(b). The United States District Court's Memorandum Opinion also discussed the Petitioner's claim concerning selective enforcement and found that selective enforcement of the nature described by the Petitioner is not a violation of the Sixth Amendment.

The Petitioner's representation as to the Sixth Circuit Court of Appeals Order is also misleading and erroneous. The Petitioner states that the Sixth Circuit Court of Appeals admitted that he had made claims of fraud and deceit and then the Petitioner concludes that the Sixth Circuit Court of Appeals was therefore required to find that his case falls within an exception to *Rooker-Feldman*. In fact, there is no specific pleading of fraud in the Petitioner's Complaint before the United States District Court. As noted by the Sixth Circuit's decision in this case, "A fair reading of the complaint reveals that Voit merely disagrees with the manner in which he was found guilty. . . . Since Voit is merely raising specific grievances regarding decisions of Kentucky's district court, his federal case is essentially an impermissible appeal of the state court judgment." Clearly the Sixth Circuit did not deem the Petitioner's United States District Court Complaint to allege fraud or deceit in the Kentucky court process.

REASONS WHY THE PETITION SHOULD BE DENIED

I. THE SIXTH CIRCUIT AND THE DISTRICT COURT CORRECTLY APPLIED THE *ROOKER-FELDMAN* DOCTRINE.

The facts, which uniformly underlie both the allegations of the Petitioner's Complaint filed in United States District Court and his appeal of his jury conviction in Kentucky state courts, are encapsulated in paragraph 13 of his Complaint (Petitioner's Appendix, p. 29); he was convicted of several violations of the Louisville & Jefferson County Board of Health Code, Chapter VIII, Rule 4

(Section 804.604). The Petitioner's apparent contention in both his state court appeal and his United States District Court Complaint that he was convicted of a crime without the prosecutor having proven some of what the Petitioner deems to be elements of the "true offense" was squarely addressed by Jefferson Circuit Court Judge William E. McAnulty in his Opinion and Order entered July 13, 1998. Judge McAnulty (now on the Kentucky Court of Appeals) held that the defining criminal conduct of the Petitioner was his occupancy of unsafe, dilapidated housing after an opportunity to repair and that the charge under which he was prosecuted supported his conviction.

Despite the Petitioner's attempt to restate facts in a different manner, it is clear that the facts and issues of the appeal of the criminal conviction are the same as the facts and issues in the United States District Court Complaint. The essential factual elements of the Petitioner's Complaint, when freed of his rhetoric and theorizing, establish that the Petitioner was convicted of a violation of the Health Code by occupying a dilapidated house after having been given ample notice and an opportunity to correct the condition of dilapidation. The issues raised in his Complaint have been both raised and actively pursued to the highest level of the Kentucky state court system by the Petitioner. The United States District Court Complaint is nothing more than an effort to re-litigate that which has been previously litigated to total resolution in the Courts of the Commonwealth of Kentucky. From the lowest court (Jefferson District Court) to the highest court (Kentucky Supreme Court), the decisions of the state courts, based upon the same facts and issues contained in the United States District Court Complaint, have been uniformly decided against the Petitioner.

The *Rooker-Feldman* doctrine precisely applies to the situation before the Court. As stated in *FOCUS v. Allegheny County Court of Common Pleas*, 75 F.3d 834 (3rd Cir. 1996):

> The *Rooker-Feldman* doctrine provides that "federal district courts lack subject matter jurisdiction to review final adjudications of a state's highest court or to evaluate constitutional claims that are 'inextricably intertwined with the state court's [decision] in a judicial proceeding.'" *Blake v. Papadakos*, 953 F.2d 68, 71 (3rd Cir. 1992) (alteration in the original) (quoting *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 483 n. 16, 103 S.Ct. 1303, 1316 n. 16, 75 L.Ed.2d 206 (1983)); see also *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923). We have interpreted the doctrine to encompass final decisions of lower state courts. *Port Auth. Police Benev. Ass'n v. Port Auth.*, 793 F.2d 169, 178 (3rd Cir. 1992). (p. 840).

Just as quoted above, the present claims are inextricably intertwined with the prior state court proceedings and, therefore, *Rooker-Feldman* applies.

Application of *Rooker-Feldman* results in the inescapable conclusion, as reached by the Sixth Circuit Court of Appeals, that the Petitioner's Complaint would have required a finding that the state court erred. Under the *Rooker-Feldman* doctrine, such a finding may not be made because " . . . federal district courts lack subject matter jurisdiction to review final adjudications of a state's highest court." *Port Auth. Police Benev. Ass'n v. Port Auth.*, *Id.*

The Sixth Circuit Court of Appeals and the United States District Court for the Western District of Kentucky correctly applied the *Rooker-Feldman* doctrine to the Petitioner's case. For this reason, this Court should deny the Petitioner's Petition for Writ of Certiorari.

II. THE PETITIONER HAS NOT STATED SUFFICIENT GROUNDS TO WARRANT GRANTING THE WRIT.

Supreme Court Rule 10 provides that a Writ of Certiorari will be granted only for compelling reasons and sets out the character of the reasons that the Court considers. The Petitioner has failed to cite any reason consistent with the considerations listed in this Rule.

A. The Petitioner Has Not Cited Any Conflict with Other Federal Courts of Appeals.

The Petitioner has indicated that the courts below erred in understanding his case in that the decision reached by the Court of Appeals is in conflict with another Sixth Circuit Court of Appeals decision, *Sun Valley Foods Company v. Detroit Marine Terminals, Inc.*, 801 F.2d 186 (6th Cir. 1988).

The Petitioner has not cited any decision of any other Circuit which conflicts with the ruling by the Sixth Circuit Court of Appeals in this matter. Instead, he states that the present ruling is in conflict with a previous Sixth Circuit ruling, *Sun Valley*. Even if the Petitioner was correct, this is not within the character of the reasons the Court considers for review of a petition for a writ of certiorari; this is in the nature of an alleged misapplication of a properly stated rule of law. Further, the Petitioner is not

correct that the Court of Appeals decision in this matter conflicts with *Sun Valley*. The Sixth Circuit Court of Appeals appropriately applied *Rooker-Feldman*, and the exception to *Rooker-Feldman* stated in *Sun Valley* is not applicable here.

B. The Petitioner Has Failed to Demonstrate that the Sixth Circuit Decided an Important Question of Federal Law that Has Not Been Settled by this Court or which Conflicts with Relevant Decisions of this Court.

The second reason given by the Petitioner as to why this Court should grant the Writ is a vague reference to the Sixth Amendment of the United States Constitution. The Petitioner alleges that prosecution of his violation of the Health Code violated the Sixth Amendment because the State failed to prove all elements of the alleged criminal offense. However, the Petitioner was convicted by a jury of his peers and, therefore, the State did prove every essential element of the crime. Based upon the Petitioner's arguments in the lower courts, it appears that the Petitioner is actually alleging that what he calls a "proof shelter sham" is selective enforcement and a violation of the Sixth Amendment. The Petitioner failed to produce any proof in the lower courts of any such alleged selective enforcement in response to the Motion for Summary Judgment; instead the Petitioner relied solely on his obtuse "proof shelter sham" rhetoric. Further, the Petitioner fails to cite any case law in support of his view that selective enforcement which is *not* based upon discrimination is a violation of the Sixth Amendment.

The United States District Court of the Western District of Kentucky considered the Petitioner's constitutional claims and found no merit in the Petitioner's contentions. The Sixth Circuit Court of Appeals agreed. The Petitioner made no valid claim of any violation of the Sixth Amendment in the United States District Court proceedings or in the Sixth Circuit Court of Appeals proceedings and he has made no valid claim of a violation of the Sixth Amendment here.

CONCLUSION

Petitioner has failed to state any compelling reason for a grant of a Writ of Certiorari, he has merely claimed error on the part of the lower courts. The United States Court of Appeals for the Sixth Circuit correctly applied the *Rooker-Feldman* doctrine and upheld the dismissal of the Petitioner's Complaint. For these reasons, the Petition should be denied.

Respectfully submitted,

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